

HUMAN SERVICES BOARD

INTRODUCTION

The Department originally decreased the number of people in the household after determining that petitioner's daughter, a college student, did not meet the work study exemption for college students. College students are normally not considered part of the food stamp household unless they meet certain regulatory exemptions. A fair hearing commenced on September 28, 2006 at which petitioner provided documentation that her daughter met the work study exemption for college students. However, additional questions were raised whether petitioner's daughter met the other exemptions for college students.

The Department subsequently determined that petitioner's daughter did not meet the other regulatory exemptions. These issues were joined to the original fair hearing. The fair hearing resumed on October 26, 2006. On November 1, 2006, Rebecca Boucher entered an appearance on behalf of petitioner and filed a Brief on November 9, 2006 arguing that petitioner's daughter met the college student exemptions and that an accommodation should be made for the daughter pursuant to the Americans with Disabilities Act (ADA).

On November 17, 2006, the hearing officer requested petitioner to supplement her ADA argument and the Department to respond to petitioner's legal arguments. On November 28, 2006, petitioner withdrew her ADA argument. The Department filed its brief on January 17, 2007 and the petitioner filed a reply brief on January 26, 2007.

Petitioner has received continuing benefits during the pendency of this case.

FINDINGS OF FACT

1. The petitioner is a single woman who receives Supplemental Security Income disability benefits. The petitioner has an eighteen-year-old daughter who is a

freshman at an out of state college.¹ The daughter receives a full financial aid package and resides in student housing during the school term.

2. The Department notified petitioner that her daughter would no longer be part of the food stamp household and her benefits would be based upon a one person household. The Department first decided to reduce the household composition because they did not believe they could include the daughter as part of the food stamp household as the daughter did not meet the work study exemptions for a college student.

3. The petitioner filed a timely appeal and a hearing was held on September 28, 2006. At that hearing, the petitioner produced evidence that her daughter is participating in the work-study program and meets the college student exemption requirements of the food stamp program.

4. During the September 30, 2006 hearing, the Department questioned whether the daughter is part of the household as she resides in student housing. They believed the daughter has meals provided through the college food service. The hearing was held open for a determination by

¹ The daughter turned eighteen years old this summer and started college this fall.

the Department and an opportunity for the petitioner to respond.

5. The Department subsequently notified the petitioner that her daughter is not a member of her household for food stamp purposes because the petitioner and daughter do not live together and are not buying and preparing food together. The Department indicated that the daughter could apply as her own household or that the daughter could be part of the petitioner's household during school breaks such as summer vacation. The petitioner challenged this decision and the hearing reconvened on October 26, 2006.

6. On September 28, 2006, the petitioner testified and presented medical documentation that her daughter is diagnosed with anorexia nervosa. Medical documentation included:

- a) October 18, 2006 letter from Dr. Hulse, daughter's treating doctor confirming diagnosis and daughter's need for assistance to improve access to food including the means to purchase her own food.
- b) October 17, 2006 letter from Ms. Kyburz-Ladue, nutrition specialist, confirming diagnosis and documenting two counseling visits during 2005.
- c) October 19, 2006 letter from Ms. Krier, LICSW, confirming diagnosis and therapeutic counseling from August 2004 to May 2005 when the daughter ended treatment contrary to medical advice.

7. On September 28, 2006, the petitioner testified that her daughter is not using her meal card and that the college is monitoring the situation. Her daughter is not allowed to play sports due to her low weight. The petitioner is using a portion of the household's food stamps to purchase care packages for her daughter. Petitioner regularly sends food packages through the mail and through other parents who visit the campus. In addition, her daughter returns home periodically for weekends. The college housing is closed for Thanksgiving, winter and spring breaks and her daughter will be home during these breaks.

8. Dr. Charles Hulse supplemented his letter with an Affidavit dated November 8, 2006. Dr. Hulse found that petitioner's daughter (A.R.) meets the DSM IV criteria for anorexia nervosa. In addition, he stated:

Apart from the psychiatric issues, the medical complications that can arise with a disorder such as [A.R.'s] are anemia, a delay in growth, electrolyte imbalances, and damages to the muscles, brain, heart, and bone.

[A.R.] has not met the criteria that warrant urgent hospitalization.

[A.R.'s] misperception of her body image, combined with her intense fear of gaining weight, produces abnormal behaviors such as a preoccupation with dietary habits that are not consistent with a normal eating pattern. She is also very particular about what foods to eat.

Another significant part of the disorder is [A.R.'s] inability to see that there is a problem. Treatment for the disorder is nutritional counseling. However, this only becomes effective if patients recognize that a problem exists. [A.R.'s] cessation of therapy, then, is part and parcel of her disorder. [A.R.] can accept that she weighs a certain amount but cannot accept that this is a problem. [A.R.] is at a stage of this illness where she makes unreasonable choices based upon her distorted judgment, which results directly from her diagnosis.

9. Petitioner filed an Affidavit dated November 7, 2006 to add to her testimony. Petitioner sends food weekly to her daughter. She sends foods that need little or no preparation such as soups, microwaveable dinners, peanut butter, canned fruit, energy bars, oatmeal, bread, trail mix, etc. When her daughter is home, petitioner prepares foods her daughter will eat. Petitioner described her daughter as someone who does not like to eat in front of others and believes that, in part, keeps her daughter from using the dining hall service. Petitioner described her daughter as irritable, impatient, and exhausted. Petitioner believes she has to send food or her daughter will not eat. Petitioner is working with the college health service even though her daughter refuses to do so.

ORDER

The Department's decision is affirmed, in part.

REASONS

The Food Stamp Act is a remedial program created by Congress to raise the nutrition levels among low income households. 7 U.S.C. § 2011. See Food Stamp Manual (FSM) § 271.1.

In general, food stamps are made available to households. Congress has defined "household" at 7 U.S.C. § 2012(i) to include:

(A) an individual who lives alone or who, while living with others, customarily purchases food and prepares meals for home consumption separate and apart from the others; or

(B) a group of individuals who live together and customarily purchase food and prepare meals together for home consumption.

(2) Spouses who live together, parents and their children 21 years of age or younger who live together. . .

. . .

(4) In no event shall any individual or group of individuals constitute a household if they reside in an institution or boarding house, or else live with others and pay compensation to the others for meals.

See F.S.M. § 273.1(a)(1) and (2).

To be considered a resident of an institution, the individual must receive over 50 percent of his/her meals from the institution based upon three meals per day. F.S.M. §

273.1(e). A student is considered a resident of an institution only when the student receives the majority of his/her meals from the institution. PP&D Interpretive Memo dated 2/8/84 facing page 273.1d. Petitioner's daughter cannot be considered a resident of an institution as she is partaking less than 50 percent of her meals from her college.

In addition, the regulations spell out who is not a household member at F.S.M. § 273.1(b). Nonhousehold members include students who do not meet the requirements of F.S.M. § 273.5. F.S.M. § 273.1(b)(2)(i).

Petitioner argues that her daughter is a member of her household and meets the exemption requirements of F.S.M. § 273.5.

The Department has interpreted when a student living at home qualifies as part of the Food Stamp household. The student must meet the criteria in F.S.M. § 273.5(a) and one criteria in F.S.M. § 273.5(b). A student who lives at school can be considered part of the Food Stamp household when he/she is home for an extended break such as a semester break, vacation, or summers. PP&D Interpretive Memo dated 11/13/87 facing page 273.1a. Based on the PP&D, petitioner's daughter is part of the Food Stamp household for those periods she returns home from school breaks such as the

extended Thanksgiving break, winter break, and spring break as well as summer vacations provided she meets the student exemptions.

Petitioner's daughter meets the criteria in F.S.M. § 273.5(a) as she is enrolled at least half time in college. Further, petitioner's daughter meets the criteria in F.S.M. § 273.5 which set out the student exemptions.

Petitioner claims that her daughter meets two of exemptions (although to be eligible her daughter need only meet one of the exemptions). In particular, petitioner claims that her daughter meets the criteria as a work study student and because her daughter is physically or mentally unfit. F.S.M. § 273.5(b)(6) and (2).

Petitioner supplied information confirming her daughter's work study status.

Petitioner supplied information that her daughter is unfit based on her diagnosis of anorexia nervosa and resultant impacts upon her daughter's strength and health. The Department argued that petitioner's daughter did not meet this exemption because she has decided not to seek treatment from the student health department and has not met the criteria for emergency hospitalization. The Department misreads the regulation.

The exemption is not based upon "disability" but on whether the individual is "physically or mentally fit". If the Food Stamp program meant to exempt only those who met the criteria for disability, the program would explicitly use the term. The Food Stamp program is replete with references to "disability" because there are special considerations given to those who meet the criteria for disability. See F.S.M. § 271.2 defining "elderly or disabled" member of a household.

The regulations do not define "physically or mentally fit". In the absence of a definition, the proper course is to look at the plain meaning of the words. Fit normally means physically healthy or sound. Conversely, unfit normally means not in good physical or mental health. Petitioner's daughter suffers from a pernicious disorder. One aspect is not being able to understand the need for psychological help. Another aspect is lack of proper nutrition leading to weakness, tiredness, and other adverse physical impacts. The record, including Dr. Hulse's Affidavit and petitioner's testimony, support this finding.

Petitioner finds herself in a difficult situation and seeks to continue coverage for her daughter during the times her daughter is at school. Petitioner is using her food stamp benefits to send food on a regular basis to her

daughter. She believes this is the only way her daughter will eat. As a result, she is seeking an interpretation of the Food Stamp rules to create a constructive household.

The question is whether petitioner's actions fit the definition of a group purchasing and preparing food together for "home consumption". F.S.M. § 273.1(a)(1)(iii). The regulation is predicated on the idea of people living together in a particular physical space. The regulations allow an individual to opt out from a group and be a household of one if the individual can show he/she purchases and prepares food separately from the group. F.S.M. § 273.1(a)(1)(ii).

Based on the plain reading of the regulations, petitioner does not have a claim that her daughter is part of the food stamp household when her daughter is at college. Our statutory authority states "[t]he board shall not reverse or modify agency decisions which are determined to be in compliance with applicable law, even though the board may disagree with the results effected by those decisions." 3 V.S.A. § 3091(d).

In conclusion, the Department's decision that petitioner's daughter is not part of the Food Stamp household when the daughter is at college should be affirmed. In

addition, petitioner's daughter meets the criteria for eligibility as part of the petitioner's household during her school breaks. This decision should be read to retroactively provide eligibility for the Thanksgiving and winter breaks.²

3 V.S.A. § 3091(d); Fair Hearing Rule No. 17.

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² Given the date of the Department's brief, we were unable to schedule this case for the January 2007 meeting, and, as a result, there may be an overpayment of benefits for the period after the winter break to our present decision. Due to the delay, the Department should consider waiving this overpayment.